IN THE (10)

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 681

WESTERN MESA OIL CORPORATION and EL SEGUNDO OIL COMPANY,

Petitioners,

vs.

EDLOU COMPANY, *et al.*, Landowners in El Segundo Community Lease No. Four-A; EDLOU COMPANY, *et al.*, Landowners in El Segundo Community Lease No. Two-B; A. A. McCRAY, Trustee for holders of overriding royalties in El Segundo Community Lease No. Four-A; A. A. McCRAY, Trustee for holders of overriding royalties in El Segundo Community Lease No. Two-B; A. A. McCRAY, WM. H. RAMSAUR and F. R. C. FENTON,

Respondents.

Brief in Opposition to Petitioners' Writ of Application for Certiorari.

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TABLE OF AUTHORITIES CITED.

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The assignment of error raises purely the questions of fact, which were determined adversely to the petitioners below, and which do not require the consideration of this court.

Petitioner asks if the authority given under Section 357 (1) of Chapter IX of the Bankruptcy Act, to divide unsecured debts into classes, is not restricted by Section 366 (3).

Undoubtedly Section 366 (3) requires the Court to examine any plan presented by a debtor and to determine if "it is fair and equitable and feasible" and if the debtor has met the other requirements of this Section. If the Court is satisfied on these points it becomes its duty to confirm the arrangement.

In this case the Bankruptcy Court duly and regularly considered the plan and found "that the revised Plan of Arrangement is fair and equitable and feasible" [Rec. 94-95, Par. 3] and that the other requirements of Section 366 had been complied with. The Court also found that "no objection or opposition to the confirmation of said revised Plan of Arrangement was presented" [Rec. 95]. These are findings of facts.

"The conclusions of the Bankruptcy Court upon the question of facts relating to whether a reorganization plan was unfair, inequitable and discriminatory, when supported by evidence and a large majority of creditors, should not be disturbed" . . . .*Siedell v. Palisades on the Des Plaines,* 89 Fed. (2d) 214, Syl. 8.

Section 366 (3) requires that the Court shall be satisfied not only that the arrangement is fair and equitable but also that it is feasible. The plan presented by the debtor would not have been feasible if the landowners had exercised their right to declare a forfeiture of the leaseholds upon which the oilwells were located, as those wells constituted virtually all of the assets of the debtor [Rec.

10]. (Schedule B . . . 1.) It was solely by reason of the agreement, made by the landowners with the debtors and the unsecured creditors, to consent to the Plan of Arrangement and to withhold any declaration of forfeiture, that any assets were left in the hands of the debtor with which to affect a composition with his creditors.

The question of fact as to whether the respondents had waived their right to declare such a forfeiture, was raised by the Plan of Arrangement [Rec. 81] and the method by which the question was to be determined was likewise set out in the plan in the same paragraph [Rec. 81]. The Referee tried the question and found that the respondents had not waived their right [Rec. 68; Rec. 72] and that respondents were entitled to payment of their claims in full under the terms of the plan. The Referee's judgment was sustained by the District Court upon review and by the Circuit Court of Appeals upon appeal (143 Fed. (2d) 843). Those questions of fact were thoroughly settled.

In their petition for writ of Certiorari to this Court, petitioners apparently abandon the ground upon which they asked for a review in the District Court and upon which they appealed to the Circuit Court, to-wit: the claim that respondents had waived their right to declare a forfeiture of leaseholds for non-payment of royalties and now apparently advance the proposition that it is inherently inequitable and discriminatory to divide unsecured debts into classes and to treat them in different ways and upon different terms. This must be their contention as the question of fact upon which they challenge respondents claims was decided adversely to them by the Referee who was sustained by the District and Circuit Courts.

As Chapter XI deals only with unsecured claims, this is to ask that Chapter XI be stricken from the Bankruptcy Laws. The power of Congress in the field of bankruptcy is both unlimited and supreme. *West Coast Life Insurance Co. v. Merced Irrigation District,* 114 Fed. (2d) at page 673. It is elementary that unsecured claims are of different classes. The General Bankruptcy Law (Section 64), makes such a division as for instance, it provides for claims for wages earned within a certain period before bankruptcy shall be paid in full in priority even to secured claims. Numerous other examples could be cited.

Certainly a lessor of oil land who reserves the right of recovery of land upon non-payment of royalties owns a debt that is different than that of a merchant who sells goods upon an open book account and must rely for recovery upon a personal judgment. None of the cases cited by petitioners support their proposition; all by implication recognize that there are classes of unsecured debts and at most hold only that there should be reasonable grounds for division between the classes.

Wherefore respondents request that the Writ of Certiorari be denied to petitioners.

Respectfully submitted,

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